



CT System

Service of Process Transmittal Form

Plantation, Florida

01/23/2003

Via Federal Express (2nd Day)

TO: H. Douglas Kitts Attorney  
Sea Ray Boats, Inc.  
2600 Sea Ray Boulevard  
Knoxville, TN 37914

RE: PROCESS SERVED IN FLORIDA

FOR SEA RAY BOATS, INC. Domestic State: FL

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

1. TITLE OF ACTION: Matt Makamak, Plff. vs Sea Ray Boats, Inc., et al, Dfs.
2. DOCUMENT(S) SERVED: Summons, Complaint, Exhibits
3. COURT: Cuyahoga County Court of Common Pleas, OH  
Case Number CV03491288
4. NATURE OF ACTION: Failure to comply with express written and implied warranties and service contract in connection with the purchase of certain 2001 Sea Ray 5400A boat, etc.
5. ON WHOM PROCESS WAS SERVED: CT Corporation System, Plantation, Florida
6. DATE AND HOUR OF SERVICE: By Certified mail on 01/23/2003 with Postmarked Date 01/17/2003
7. APPEARANCE OR ANSWER DUE: Within 28 days
8. ATTORNEY(S): Timothy P. Cannon  
(440) 357-5537  
41 E. Erie Street  
Palmsville, OH 44077
9. REMARKS: Trial by jury demanded.  
i-Note sent 01/23/2003 to EDRETZKA@BRUNSWICK.COM-Note sent 01/23/2003 to DKITTS@SEARAY.COM

CC: Edna Dretzka Paralegal  
Brunswick Corporation  
1 N Field Court  
Lake Forest, IL 60045-4811

SIGNED CT Corporation System  
PER Anne Boudiller /DM  
ADDRESS 1200 South Pine Island Road  
Plantation, FL 33324  
SOP WS 0005087980

Information contained on this transmittal form is recorded for CT Corporation System's record keeping purposes only and to permit quick reference for the recipient. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information that can be obtained from the documents themselves. The recipient is responsible for interpreting the documents and for taking the appropriate action.

CASE NO.  
CV03491288

D1 CM

SUMMONS NO.  
3380415

Rule 4 (B) Ohio

Rules of Civil  
ProcedureMATT MALKAMAKI  
VS  
SEA RAY BOATS, INC. ETAL

PLAINTIFF

DEFENDANT

## SUMMONS

SEA RAY BOATS INC  
\* CT CORPORATION SYSTEM - STATUTORY  
AGENT  
1200 SOUTH PINE ISLAND RD  
FORT LAUDERDALE FL 33324-0000

You have been named defendant in a complaint (copy attached hereto) filed in Cuyahoga County Court of Common Pleas, Cuyahoga County Justice Center, Cleveland, Ohio 44113, by the plaintiff named herein.

You are hereby summoned and required to answer the complaint within 28 days after service of this summons upon you, exclusive of the day of service.

Said answer is required to be served on:

Said answer is required to be served on Plaintiff's Attorney (Address denoted by arrow at left.)

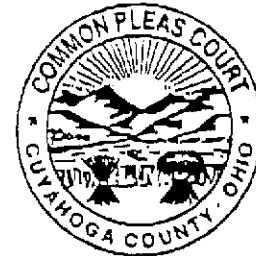
Plaintiff's Attorney

TIMOTHY P CANNON  
41 EAST ERIE ST.  
PAINESVILLE, OH 44077-0000

Your answer must also be filed with the court within 3 days after service of said answer on plaintiff's attorney.

If you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

Case has been assigned to Judge:

JOSEPH D RUSSO  
Do not contact judge. Judge's name is given for  
reference only.GERALD E. FUERST  
Clerk of the Court of Common PleasDATE  
Jan 14, 2003

By

Deputy

COMPLAINT FILED 01/14/2003

SEA RAY BOATS INC  
1200 SOUTH PINE ISLAND RD  
1200 SOUTH PINE ISLAND RD  
FORT LAUDERDALE FL 33324-0000

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

MATT MALKAMAKI  
9411 Headlands Road  
Mentor, OH 44060

Plaintiff,

-vs-

SEA RAY BOATS, INC.  
C/o Statutory Agent,  
CT Corporation System  
1200 South Pine Island Rd.  
Plantation, FL 33324

and

SEA RAY OF KNOXVILLE, LLC  
C/o Statutory Agent,  
Sharon Lee Marcum  
9909 Kingston Pike  
Knoxville, TN 37922

and

MARINEMAX OF OHIO, INC.  
Fka MARINEMAX OF TREASURE  
COVE, INC.  
C/O Statutory Agent  
Csc-Lawyers Incorporating Service  
50 W. Broad St.  
Columbus, Ohio 43215

and

MARINEMAX SERVICES, INC.  
C/O Statutory Agent  
Csc-Lawyers Incorporating Service  
50 W. Broad St.  
Columbus, Ohio 43215

CASE NO.

JUDGE

COMPLAINT

(Jury Demand Endorsed Hereon)

CANNON, STERN, A'ENI & LOIACONO CO., L.P.A.  
Milburn Building, 41 E. Erie Street, Painesville, OH 44077-3983  
TELEPHONE (440) 357-5537 or (440) 942-5232  
FACSIMILE (440) 357-9334

and )  
)  
)  
JOHN DOE, INC. )  
Address unknown. )  
)  
)  
Defendants )

Now comes Plaintiff, Matt Malkamaki, by and through counsel, and for his Complaint against Defendants, states as follows:

**BACKGROUND**

- 1) Plaintiff, Matt Malkamaki, is an adult individual citizen and legal resident of the State of Ohio, residing at 9411 Headlands Road, Mentor, Ohio 44060.
- 2) Defendants, Sea Ray Boats, Inc., a Florida Corporation and Sea Ray of Knoxville, LLC a Tennessee Corporation, are qualified to and regularly do conduct business in the State of Ohio by and through their agent and/or authorized dealer, Marinemax of Ohio, Inc.
- 3) Defendants, Marinemax of Ohio, Inc., fka Marinemax of Treasure Cove, Inc., and Marinemax Services Inc., are Ohio Corporations qualified to do and regularly conducting business in the State of Ohio.
- 4) On or about August 28, 2001, Plaintiff purchased a 2001 Sea Ray 5400A boat manufactured and warranted by Defendants, bearing Boat Serial No. SER Y0804J001540DA325. (A copy of said purchase agreement is attached hereto as Plaintiff's "Exhibit A" and fully incorporated herein).
- 5) The boat was purchased in the State of Ohio and is registered in Ohio.

6) The price of the boat, including registration charges, document fees and sales tax, but excluding finance charges, bank charges and other collateral charges not specified, yet defined and included under R.C. §1345.71 et seq. was approximately \$840,000.00.

7) Plaintiff states that as a result of the ineffective reasonable opportunity to care/repair made by Defendants, through the authorized dealer(s), the boat cannot be utilized for the purposes intended by Plaintiff at the time of acquisition and hence, the boat is worthless and/or substantially impaired.

8) In consideration for the purchase of the above boat, Defendants issued to Plaintiff several written warranties, including a two (2) year MaxCare warranty (Referenced in Plaintiff's attached "Exhibit A" under dealer-installed options).

9) Plaintiff notified Defendants and/or the authorized dealer(s) on one or more occasions, and/or formally notified Defendants by letter of Plaintiff's present intention to revoke acceptance of the boat and requested the return of all funds paid towards the boat.

#### COUNT I

#### **MAGNUSON-MOSS FEDERAL TRADE COMMISSION ACT AS TO BOTH DEFENDANTS**

10) Plaintiff hereby reavers and incorporates by reference all statements and allegations previously set forth as if fully rewritten herein.

11) Plaintiff is a "Consumer" as defined by U.S.C. §2301(3).

12) Defendants are "Suppliers" and "Warrantors" as defined by 15 U.S.C. §2301(4) & (5).

13) The boat is a "Consumer Product" as defined by 15 U.S.C. §2301(1).

14) One or more of the warranties given to Plaintiff by Defendants was a "Written Warranty" as defined by 15 U.S.C. §2301(6).

15) Plaintiff purchased a "service contract" as defined by 15 U.S.C. §2301(8).

16) Defendants have been unable, unwilling and/or has refused to conform the boat to the written warranty and/or service contract by repairing one or more nonconformities within a reasonable number of attempts or a reasonable amount of time.

17) Plaintiff states that Defendants have been afforded a reasonable opportunity to cure the boat's nonconformities pursuant to 15 U.S.C. §2310(e).

18) Section 15 U.S.C. §2310(d)(1) provides:

Subject to subsections (a)(3) and (e) of this section, a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief...

19) As a direct and proximate result of Defendants failure to comply with Defendants' express written and implied warranties and service contract, Plaintiff has and continues to suffer damages.

20) If Defendants maintain a qualified Informal Dispute Resolution Mechanism, Plaintiff has resorted to it at least forty (40) days prior to filing this Complaint and/or has pursued that process to its completion, as required by 15 U.S.C. §2310(a) and rules promulgated thereunder.

21) Pursuant to 15 U.S.C. §2310(d)(2), Plaintiff seeks all costs, including attorney fees and expert witness fees.

COUNT TWO

OHIO UNIFORM COMMERCIAL CODE  
AS TO BOTH DEFENDANTS

22) Plaintiff hereby reavers and incorporates by reference all statements and allegations previously set forth as if fully rewritten herein.

23) The defects and nonconformities exhibited by the boat constitute a breach of contractual and statutory obligations of Defendants, including, but not limited to, the following:

- a) Express Warranty
- b) Implied Warranty of Merchantability; and
- c) Implied Warranty of Fitness for a Particular Purpose.

24) At the time of delivery of the boat to Plaintiff and at all times subsequent thereto, Plaintiff has justifiably relied on Defendants express and implied warranties, obligations and representations with regard to the boat.

25) At the time of delivery of the boat and at all times subsequent thereto, Defendants were aware that Plaintiff was relying on Defendants' express and implied warranties, obligations and representations with regard to the boat.

26) Plaintiff has incurred damage as a direct and proximate result of Defendants breach and failure to honor its express and implied warranties, obligations and representations with regard to the boat.

27) Plaintiff has incurred damage as a direct and proximate result of the failure of essential purpose of Defendants express and implied warranties, obligations and representations with regard to the boat.

COUNT THREE

**IMPLIED WARRANTY IN TORT AS TO BOTH DEFENDANTS**

28) Plaintiff hereby reavers and incorporates by reference all statements and allegations previously set forth as if fully rewritten herein.

29) The defects and nonconformities exhibited by the boat constitute a breach of contractual and statutory and/or common law obligations of Defendants, including, but not limited to the following:

- a) Implied Warranty of Merchantability sounding in Tort; and
- b) Implied Warranty of Fitness for a Particular Purpose sounding in Tort.

30) At the time of delivery of the boat to Plaintiff and at all times subsequent thereto, Plaintiff has justifiably relied on Defendants' implied warranties, obligations and representations with regard to the boat.

31) At the time of delivery of the boat and at all times subsequent thereto, Defendants were aware that Plaintiff was relying on Defendants implied warranties, obligations and representations with regard to the boat.

32) Plaintiff has incurred damage as a direct and proximate result of Defendants breach and failure to honor its implied warranties, obligations and representations with regard to the boat.

COUNT IV

**OHIO CONSUMER SALES PRACTICES ACT  
AS TO BOTH DEFENDANTS**

33) Plaintiff hereby reavers and incorporates by reference all statements and allegations previously set forth as if fully rewritten herein.



34) Section 1345.01 et seq. is commonly known as, and will hereinafter be referred to as, the "Ohio Consumer Sales Practices Act" or "CSPA."

35) Plaintiff is a "Person" as defined by R.C. §1345.01(B).

36) Defendants are "Suppliers" and "Persons" as defined by R.C. §1345.01(C) & (B).

37) Plaintiff's purchase of the boat is a "Consumer Transaction" as defined by R.C. §1345.01(A).

38) In connection with said transaction, Defendants committed unfair, deceptive and unconscionable acts and practices in violation of R.C. §1345.02 and R.C. §1345.03. *Said acts and practices include, but are not limited to, the following:*

39) Defendants representation that the boat contained a valid warranty, which would cause effective warranty repairs to be made within a reasonable time and within the warranty period, was untrue.

40) Defendants representation that the vehicle contained, as a remedy, an effective warranty, which would cause effective warranty repairs to be made within a reasonable time and within the warranty period, was false.

41) Defendants representation that the boat would have the natural benefits of being fit for its intended and ordinary purposes and merchantable was untrue.

42) Defendants representation that the boat was fit for ordinary purposes, was untrue.

43) Defendants representation that the boat was merchantable was untrue.

44) Defendants knowingly committed all of the above-referenced unfair, deceptive and unconscionable acts and practices.

**ACTS DECLARED UNFAIR, DECEPTIVE OR UNCONSCIONABLE  
BY ATTORNEY GENERAL RULES**

45) In connection with said transaction, Defendants committed acts and practices that have been declared to be unfair, deceptive or unconscionable by rules adopted pursuant to R.C. §1345.05(B)(2).

46) Said acts and practices were committed after such rules were made available for public inspection pursuant to R.C. §1345.05(A)(3).

*Said acts and practices include, but are not limited to, the following:*

47) Defendants never disclosed any defects in connection with the sale of the boat as required by O.A.C. 109:4-3-16(B)(14).

48) Defendants knowingly committed all of the above-referenced unfair, deceptive and unconscionable acts and practices.

**ACTS DECLARED UNFAIR, DECEPTIVE OR UNCONSCIONABLE  
BY OHIO COURTS**

49) In connection with said transaction, Defendants committed acts and practices that have been declared violations of R.C. §1345.02 and/or R.C. §1345.03 by Courts of the State of Ohio.


50) Said acts and practices were committed after such court decisions were made available for public inspection pursuant to R.C. §1345.05(A)(3). *Said acts and practices include, but are not limited to, the following:*

51) Defendants, who had a legal obligation to Plaintiff under the written warranty, breached, avoided and/or attempted to avoid its obligations to Plaintiff.

52) Defendants failed to honor its implied warranty of merchantability.

JURY DEMAND

A trial by jury in the within action is hereby demanded on all issues except the determination of reasonable attorney fees and costs and the determination of which damages shall be trebled, which are reserved for determination by the Court in the event that Plaintiff prevails at a trial on the merits.

  
Timothy P. Cannon  
James D. Falvey  
Attorneys for Plaintiff

Malikamoh, Malikamoh (Suzanne)

CANNON, STERN, AVENI & LOIACONO CO., L.P.A.  
Milburn Building, 411 E. Erie Street, Painesville, OH 44077-3983  
TELEPHONE (440) 357-5557 or (440) 942-5232  
FACSIMILE (440) 357-9234

**SOLD TO** Case: 1:03-cv-00286-CAB Doc #: 1-1 Filed: 02/14/03 12 of 13 PageID #: 16

5423 FIRST MIDDLE LAST MM. PHONE BUS. PHONE

1904 VENTOR AVE PAINESVILLE, OH 1904 VENTOR AVE 44071-1325 NEW ☐ USED ☐

1133-1 TR YEAR MANUFACTURER MODEL SERIAL NO. STOCK NO.

BOAT 2001 SEA RAY MANUFACTURER MODEL SERIAL NO. STOCK NO.

MOTOR

TRAILER

--- STANDARD EQUIPMENT ---	--- OPTIONAL EQUIPMENT ---	--- DEALER INSTALLED OPTIONS ---
2001 SEA RAY STANDARD EQUIPMENT: HIGH-TECH WEEKS APPLICABLE 1900 & 1900 SEA RAY YACHT CERTIFICATION PRESSURE WATER SYSTEM FRESHWATER WASHDOWN 1 LOCKSIDE INTERIOR COCKPIT SHOWER AIR CONDITIONING/HEATING SLIDING WOOD-ACCENT, TILT & HYDRAULIC - POWER ASSISTED SPOTLIGHT w/ Dual Halogen Bulbs Remote Controlled (ACR) Motor & Fwd SR TV/VCR/Radio Combo Refrigerator/Freezer w/ Ice Maker Microwave/Convection Oven, 120V Coffee Maker, 120V (Space Maker) Television (Color), VCR w/ Remote Bar w/ Corian Countertop, Glass, Bottle & Utensil Storage Hardtop, Fiberglass w/ SS Grap Rails, Overhead Lighting w/ Electronic Dimmer & Red Night Lighting Carpet Liner, Snap-In Windless, Chain w/ Front Switches Canvases: All, Front & Side Curtains, Hardtop Enclosure & Windshield Shades Windshield Washer System Horn, Air w/ Accumulator Tank Shore Power, Cablemaster Raytheon Raydata: Depth Finder Speed/Sunlog, Water Temp, Telephone/Intercom System w/ Call Phone Interface & Antenna	201 Pkg 45 Fiberglass Aurora Countertops Interior - Sovereign Cherry Carpet: Fabrica Upgrade T-CAT 1900 1900s IT-600 PPH Air Conditioning/Heating - Cocoon Box Thruster OSS Satellite TV System DVD Player w/ 5.1 Surround Sound Flooring, Tile - Hard 15.0kW Westerbeke Generator Propellers, Spine w/ Holders (Pair) Sun Pad, Forward Deck Swim Platform, Hydraulic Marine Lift Windless Captain Flag Pole 84S VHF and Quad Robertson Autopilot AP-22 Furuno Radar 1942 Northstar GPS 952-Color Hardtop Sunshade w/ All Curtain	TIME ON TRANSFER TWO YEAR WARRANTY CHECK ALL SYSTEMS-NEW FULL TANK OF FUEL DEAL SUBJECT TO SURVEY OF 1900 DEAL TO CLOSE IN FULL ON OR BEFORE 10-11
ALL INCENTIVES APPLIED		

DESCRIPTION OF TRADE-IN			TOTAL CASH DELIVERED PRICE	
TRADE			LESS TRADE	808463.36
1999	SEA RAY	3800A-D	BALANCE	260000.00
			PLUS TAXES	549483.36
			BALANCE	31536.54
			REGISTRATION AND TITLE SERVICE	580000.00
				N/A
			BALANCE	580000.00
			LESS DEPOSIT ON ORDER	580000.00
			PLUS TRADE-IN DEBT	N/A
			BALANCE DUE	N/A

BUYER IS SOLELY RESPONSIBLE FOR THE PAYMENT OF ALL APPLICABLE LOCAL, STATE AND/OR FEDERAL TAXES.

BUYER AGREES THAT THE BALANCE DUE ON DELIVERY WILL BE PAID BY CASH, CASHIER'S CHECK OR A TIME SALE. IF A TIME SALE, THIS AGREEMENT IS NOT FINAL AND BINDING ON SELLER UNLESS (1) BUYER'S CREDIT HAS BEEN APPROVED BY A BANK OR FINANCE COMPANY THAT AGREES TO PURCHASE A RETAIL INSTALLMENT CONTRACT BASED UPON THIS AGREEMENT, (2) APPROPRIATE FINANCING DISCLOSURES ARE MADE AND (3) BUYER HAS EXECUTED A RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT.

THIS AGREEMENT IS NOT FINAL AND BINDING ON SELLER UNLESS APPROVED AND SIGNED BY A MANAGER OF SELLER.

FINAL PAYMENT BY CASHIER'S CHECK.

DELIVERED BY: \_\_\_\_\_

FOR SELLER: \_\_\_\_\_

SALES CONSULTANT

APPROVED: \_\_\_\_\_

MANAGER

BUYER ACKNOWLEDGES RECEIVING A FULLY COMPLETED COPY OF THIS AGREEMENT. BUYER ACKNOWLEDGES READING AND UNDERSTANDING ALL OF THE TERMS AND CONDITIONS IN THIS AGREEMENT, INCLUDING THE TERMS AND CONDITIONS ON THE REVERSE SIDE OF THIS AGREEMENT.

SEE THE REVERSE SIDE OF THIS AGREEMENT FOR IMPORTANT INFORMATION REGARDING LIMITATIONS OF WARRANTIES.

SIGNED X Matt Mabel

BUYER

SIGNED X \_\_\_\_\_

BUYER

EXHIBIT "A"

WHITE - FILE: YELLOW - BUYER: PINK - SALES CONSULTANT:

[illegible][illegible]

7. **MODEL OR DESIGN CHANGES.** Buyer understands that the manufacturer retains the right to make changes in the model or design of its new products, as well as the accessories, and/or make Buyer agrees that it will not be obligated to obligate either Seller or the manufacturer to make corresponding changes in the fundamental model, and/or accessories covered by this Agreement, either before or after the delivery thereof to Buyer.

Agreement supersedes any prior Purchase Agreement between Buyer and Seller for the purchase of a Ford, motor and/or accessories that have not been so substituted. Except as specifically set forth in this Agreement, Seller disclaims any representations or statements by any agents, employees or representatives, whether oral or in writing, and Buyer has no claim in any such representations or statements.

10. GOVERNING LAW. THE PARTIES AGREE THAT THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH SELLER'S LOCATION DESIGNATED ON THE FRONT SIDE OF THIS ORDER IS SITUATED.

\_\_\_\_\_